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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 405

UNION CITY TRANSFER, ET AL.,
Petitioners,

vs.

FLOYD ADAMS,
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS, SECOND SUPREME JUDICIAL DISTRICT OF TEXAS.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners, Union City Transfer, Cecil E. Vallee and E. H. Vallee, individually and doing business as a partnership under the name of Union City Transfer, respectfully petition for a Writ of Certiorari to review a final decision of the Court of Civil Appeals, The Second Supreme Judicial District of Texas, Sitting at Fort Worth, being the highest Court of said state in this cause.

Statement of the Matters Involved

The District Court of Wharton County, Texas deprived Petitioners of the Equal Protection of the Laws, Due

Process of Law, and their Rights, Privileges and Immunities secured by the Constitution and Laws of the United States:

> After a mixed jury of ten (10) white men and two (2) Negroes had deliberated upon a verdict in this case for six hours (6), and while they were still considering of their verdict, the trial judge discharged them from the protection of an officer of the court, permitted them to separate and to go their several ways, because the Negro jurors could not eat with the White jurors in Wharton County, Texas.

Statement of Jurisdiction

The Supreme Court of the United States has jurisdiction to review the decision of the Court of Civil Appeals, Second Supreme Judicial District of Texas in this case, by Writ of Error:

1. A. 28 U. S. C. A. 1257:

> "Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> "(3) By Writ of Certiorari, where the validity of a state statute is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under the United States."

B. The validity and construction of Rule No. 282 of the Texas Rules of Civil Procedure is involved:

> "Jury kept together. The jury may either decide a case in court or retire for deliberation. If they retire, they shall be kept together in some convenient place, under the charge of an officer, until they agree upon a

verdict or are discharged by the court; but the court in its discretion may permit them to separate temporarily for the night and at their meals and for other proper reasons." Vernon's Texas Rules of Civil Procedure, 1948 Supp. 404.

C. The date of the judgment sought to be reviewed by a Writ of Certiorari is March 28, 1952; motion for rehearing was overruled April 25, 1952. The Supreme Court of Texas refused Petitioners application for a Writ of Error on June 25, 1952 and overruled their motion for rehearing on July 23, 1952 (Certificates of said Court of Civil Appeals and the Supreme Court of Texas) (R. 9, 58-72).

2. The nature of the case and the rulings of the court:

A. Respondent Floyd Adams brought this action in the District Court of Wharton County, Texas, to recover from Petitioners, the sum of Forty Thousand Dollars, for personal injuries and property damages sustained in a rear-end truck-automobile collision, alleged to have been proximately caused by the negligence of Petitioner's truck driver (R. 2-5). Petitioners admitted the negligence and proximate cause, and offered to pay the property damages, but denied that Responednt had received any personal injuries (R. 5-6). A mixed jury of ten (10) White men and two (2) Negroes tried the case. The trial judge instructed the jury at the beginning of the trial that when the case was submitted to them for a verdict, they would not be permitted to separate, but would remain together under the charge of an officer until they reached a verdict or were discharged. The jury began their deliberations about noon and continued until about 6:00 P. M. of the same day, when they asked to be permitted to eat. The trial judge, without consulting anyone, retracted his prior charge, discharged them from the custody of the deputy sheriff, permitted them to

separate and go their several ways to supper, because, he says, there was no public place in Wharton, Texas where two Negroes could eat with ten White men. When the jury did return severally to their duties they promptly reached a verdict, finding that the Respondent did receive personal injuries and awarded him $13,000.00 (Hearing on Motion For New Trial) (R. 9).

B. The Court of Civil Appeals, Second Supreme Judicial District of Texas, held that the order of the trial judge permitting the jury to separate because of such discrimination against the Negro jurors was within his lawful discretion, and no injury was shown. *Union City Transfer* v. *Floyd Adams* (Tex. Civ. App.), 248 S. W. 2d 256, 260. This ruling deprived Petitioners of the right of a common law trial by jury, guaranteed by the Constitution. *Oelrichs* v. *Spain* (*Oelrich* v. *Williams*), 15 Wall 211, 21 L. Ed. 43; *Parsons* v. *Bedford*, 3 Peters 433, 7 L. Ed. 732. In a common law trial by jury, the jury must be kept together in the custody of a sworn officer and prevented from communicating with other persons, from the time of beginning their deliberations until they have agreed upon a verdict or are discharged. *Nelson* v. *Comm.* 264 Ky. 47, 94 S. W. 2d 29; *Lynch* v. *Wermuth Fur Co.*, 53 S. D. 162, 220 N. W. 458.

C. The question involved is substantial:

The trial judge discharged the jury from the protection of an officer of the court, permitted the White and the black jurors to separate, and to go their separate and several ways during their deliberations upon a verdict in this case, because, he said, so far as he knew, "there was no cafe in Wharton, Texas, at least where two Negroes and ten White men could eat together" (S. F. Hearing on Motion For a New Trial R. 37-38).

The jury had two issues to answer, and they had spent six continuous hours (before noon until about 6:00 P. M.)

and had not reached a verdict (R. 11-13; S. F. Hearing on Motion For A New Trial R. 34-37). Something happened to them or some of them during the time of their separation: They immediately reached a verdict upon their return to the courthouse; and one juror said that he would rather forget the whole matter, that it was just like a nightmare to him (S. F. Hearing on Motion For A New Trial R. 31).

The Constitution and Laws of the United States guarantee citizenship to the Negroes, 8 U. S. C. A. 41 *et seq.;* they cannot legally be excluded from jury service in Texas 18 U. S. C. A. 234; 30 Tex. Jr. (Sec. 4) 910; nor can they be lawfully deprived of their rights. 28 U. S. C. A. 242. But they were deprived of their rights in this case; they were forced to separate and segregate during their deliberations as jurors; they were discriminated against; and such deprivation and discrimination probably caused the rendition of an improper verdict.

The negro jurors were on the jury list, and when they were selected as jurors in this case, Petitioners had every reason to believe that they would be treated the same as the white jurors. For more than twenty-four years in the trial of cases, this was Petitioners' Counsel's first time to have a trial judge discharge the jury from the protection of an officer during their deliberations. Petitioners' relied and had the right to rely upon the practice of keeping the jury together during their deliberations, whether they were white or black.

3. Petitioners raised the question presented here in the trial court by a motion for a new trial which was overruled (R. 21-27); they assigned the same as error in the Court of Civil Appeals, Second Supreme Judicial District of Texas, and the appellate court affirmed the action of the trial court (*Union City Transfer* v. *Floyd Adams,* 248 S. W. 2d 256, 260), and in their motion for a rehearing in said appellate

court, which was overruled (Certificate From The Court of Civil Appeals); they presented the same to the Supreme Court of Texas in their application for a Writ of Error, which was refused, and in their motion for rehearing in said Supreme Court, which was denied (Certificates of the Supreme Court of Texas).

The Question Presented

The following question is presented: Did the charge of The District Court of Wharton County, Texas, made under color of Rule No. 282 of the Texas Rules of Civil Procedure, releasing a mixed jury of ten (10) White men and two (2) Negroes from The Protection of an Officer of the Court, Permitting Them To Go Their Separate Ways, During Their Deliberations, Because The Negroes Were Not Allowed to Eat With The White Men In Wharton, Texas, Deprive Petitioners of the Equal Protection of the Law, Due Process of Law, and Their Right To A Common Law Trial by Judy?

The Reasons Relied On for the Allowance of the Writ

The said action of the District Court of Wharton County, Texas, affirmed by the Court of Civil Appeals, Second Supreme Judicial District of Texas, is not in keeping with the principles of law announced by this Court in the following cases:

Smith v. *Texas*, 311 U. S. 131, 61 S. Ct. 165, 85 L. Ed. 84;
Pierre v. *Louisiana*, 306 U. S. 354, 59 S. Ct. 536, 83 L. Ed. 757;
Hill v. *Texas*, 316 U. S. 400, 62 S. Ct. 1159 and
Patton v. *Mississippi*, 322 U. S. 463, 68 S. Ct. 184.

This Court forced the courts of Texas to put Negroes on juries; and this is one way to circumvent the law: enforce segregation of the Negroes while doing jury service. Such

segregation by a trial judge is not consistent with the fundamental principles of liberty and justice *Buchalter* v. *People of the State of New York,* 319 U. S. 427, 63 S. Ct. 1129; and the decision of said appellate court does not rest upon a fair and substantial basis. Constitutional obligations should not be so evaded. *Broad River Power Co.* v. *South Carolina,* 281 U. S. 537, 540, 50 S. Ct. 401, 402, 74 L. Ed. 1023; *Demorest* v. *City Bank Farmers Trust Co.,* 321 U. S. 36, 64 S. Ct. 384.

Conclusion

The premises considered, Union City Transfer, C. E. Vallee and E. H. Vallee, individually and doing business as a partnership under the name of Union City Transfer, pray that a Writ of Certiorari issue to review the judgment of the Court of Civil Appeals, Second Supreme Judicial District of Texas, in the above entitled cause; for general and special relief.

UNION CITY TRANSFER, ET AL.,
Petitioners,

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